No. 14,475

IN THE

United States Court of Appeals

For the Ninth Circuit

GERALD A. BROWN, Regional Director of the Twentieth Region of the National Labor Relations Board, for and on behalf of The National Labor Relations Board,

Appellant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, and BELL TELEPHONE COMPANY OF NEVADA, a corporation,

Appellees.

APPELLEES' PETITION FOR REHEARING OR MODIFICATION OF DECISION.

JOHN A. SUTRO,
CHARLES F. PRAEL,
Standard Oil Building, San Francisco 4, California,
Attorneys for Appellees.

PILLSBURY, MADISON & SUTRO,
Standard Oil Building, San Francisco 4, California,
Of Counsel.

FILED
JAN 21
PAUL P. O'BRIEN,
CLERK

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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APPELLEES' PETITION FOR REHEARING OR MODIFICATION OF DECISION.

To the Honorable William Denman, Chief Judge, and to the Honorable Homer T. Bone and Walter L. Pope, Circuit Judges, United States Court of Appeals for the Ninth Circuit:

We earnestly petition this Court either to grant a rehearing or to modify its decision in so far as that decision directs the trial court to grant all the relief sought by

appellant on the ground that such direction is in conflict with decisions of the Supreme Court of the United States and of this Court.

The decision (Opinion, p. 4) provides:

> "The judgment is reversed and the district court ordered to grant the relief sought by the Board."

We respectfully call to the Court's attention that relief sought by appellant—the prayer of appellant's petition (R.[1] 14-15)—was not limited to the specific matters considered by this Court in its opinion. In paragraph (e) of its prayer appellant sought a blanket order restraining the employers from (R. 15)

> "In any other manner interfering with, restraining or coercing their employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities."

Thus, if the decision of this Court directing the trial court "to grant the relief sought by the Board" is allowed to stand, the trial court will be required to issue a blanket order in effect restraining the employers from violating any provision of the National Labor Relations Act relating to the rights of any of their employees to join labor organizations or to bargain collectively through representatives of their own choosing.

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[1] Reference to the printed Transcript of Record is designated "R."

The words of paragraph (e) of appellant's prayer are virtually word for word the same as part of the more limited cease and desist order which this Court ordered stricken in *National Labor Relations Bd. v. Cowles Pub. Co.* (9th Cir. 1954) 214 F.2d 708, 711. In this respect the decision of this Court in the case at bar is also contrary to decisions of the Supreme Court of the United States condemning such blanket restraints.

Labor Board v. Express Pub. Co. (1941) 312 U.S. 426, 435-438;

May Stores Co. v. Labor Board (1945) 326 U.S. 376, 386-393;

Labor Board v. Crompton Mills (1949) 337 U.S. 217, 226.

As the Supreme Court of the United States pointed out in *Labor Board v. Express Pub. Co.* (1941) 312 U.S. 426, 435-436, supra:

> "* * * the mere fact that a court has found that a defendant has committed an act in violation of a statute does not justify an injunction broadly to obey the statute and thus subject the defendant to contempt proceedings if he shall at any time in the future commit some new violation unlike and unrelated to that with which he was originally charged."

For the same reason, a determination that the employers may have violated the Act in respects discussed in this Court's opinion does not justify a blanket restraint which would subject them to contempt proceedings if they should be charged with some new and wholly unrelated violation of the National Labor Relations Act.